

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH F. MUTO,	:	
Petitioner,	:	CIVIL ACTION NO. 3:CV-11-1344
v.	:	
DONNA ASURE, WARDEN,	:	(Judge Kosik)
Respondent.	:	

FILED
SCRANTON
AUG 22 2011
PER DEPUTY

MEMORANDUM AND ORDER

AND NOW, THIS 23rd DAY OF AUGUST, 2011, IT APPEARING TO THE COURT THAT:

- (1) Petitioner, Joseph F. Muto, formerly an inmate at the Monroe County Correctional Facility, Stroudsburg, Pennsylvania, filed a petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §2254 on July 21, 2011;
- (2) The basis of his petition was that he was serving a twenty-one (21) day sentence for violating a protection from abuse order, that he had heart related health issues and that his confinement constituted cruel and unusual punishment ;
- (3) The matter was assigned to Magistrate Judge Thomas M. Blewitt;
- (4) On August 3, 2011, the Magistrate Judge issued a Report and Recommendation (Doc. 4) wherein he recommended that the Petition for Writ of Habeas Corpus be dismissed as moot since Petitioner was no longer in custody having fully served his sentence;
- (5) Specifically, the Magistrate Judge found that Petitioner had failed to exhaust any available state court remedies, that Petitioner's redress for conditions of confinement might properly be brought pursuant to 42 U.S.C. §1983, and that Petitioner was no longer in custody because he was released from custody on July 31, 2011, having served the maximum time on his sentence;

(6) Petitioner was served with the Magistrate Judge's Report and Recommendation at both the Monroe County Correctional Facility and at his address in New York (Docs. 5 and 6);

(7) To date, Petitioner has failed to file any objections to the Report and Recommendation;

AND, IT FURTHER APPEARING THAT:

(8) If no objections are filed to a Magistrate Judge's Report and Recommendation, the petitioner is not statutorily entitled to a de novo review of his claims 28 U.S.C. § 636 (b)(1)(C); Thomas v. Arn, 474 U.S. 140, 150-53 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a Magistrate Judge's Report prior to adopting it. Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987);

(9) We have considered the Report of the Magistrate Judge and we agree with his Recommendations;

(10) After reviewing the petition, we agree with the Magistrate Judge that the petitioner's request for relief is moot and the petition should be dismissed.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:


(1) The Report and Recommendation of Magistrate Judge Thomas M. Blewitt dated August 3, 2011 (Doc. 4) is **ADOPTED**;

(2) Petitioner's Motion for Leave to Proceed in forma pauperis (Doc. 2) is **GRANTED**;

(3) Petitioner's petition for Writ of Habeas Corpus is **DISMISSED**;

(4) The Clerk of Court is directed to **CLOSE** this case and to forward a copy of the Memorandum and Order to the Magistrate Judge; and,

(5) Based on the court's conclusion herein, there is no basis for the issuance of certificate of appealability.


Edwin M. Kosik
United States District Judge